

**FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

**DEBORAH GOODMAN, for  
TRINITY AT WARDS COVE  
INVESTORS, LLC**

Hearing Examiner File:  
**MUP-12-028 (SD)**

Department Reference:  
3011009

for approval of a preliminary unit  
lot subdivision

**Introduction**

The Applicant seeks preliminary approval of a 21-unit lot subdivision of property located in the Eastlake neighborhood. The Director, Department of Planning and Development (Director or Department) recommended approval of the subdivision. There were no requests for further consideration of the Director's recommendation pursuant to SMC 23.76.024.D.

A public hearing on the subdivision application was held before the Examiner on February 20, 2013. The Applicant, Trinity at Wards Cove Investors, LLC, was represented by Deborah Goodman, *pro se*, and the Director was represented by Stephanie Haines, Senior Land Use Planner. The record closed following the Examiner's site visit on March 2, 2013.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record and visiting the site, the Examiner enters the following findings of fact, conclusions and decision.

**Findings of Fact**

**Site and Vicinity**

1. The proposal site is addressed as 2808 Fairview Avenue East and is located within the Eastlake Residential Urban Village at the northeast corner of Fairview Avenue East and East Hamlin Street. The site is approximately 36,000 square feet in size and rectangular in shape.

2. The site is zoned Lowrise 1 Residential-Commercial (L1-RC). The surrounding vicinity has a mix of zoning designations. Across Fairview Avenue East is Commercial 2 zoning with a 40-foot height limit that extends to the northeast along Lake Union. Uphill to the east is Neighborhood Commercial 3 zoning with a 40-foot base height limit (NC3-40) that transitions to NC2-40 to the southeast of the site. Property to the south, across

East Hamlin Street, is zoned Lowrise 3 Residential/Commercial on the upland side of Fairview, and residential Lowrise 2 on the waterward side. Surrounding development includes marinas, yacht clubs, residences and floating homes, office and retail structures and multifamily structures. It generally reflects the zoning, although some nearby commercial structures are well below zoning potential and likely to be redeveloped.

3. The site fronts on Fairview Avenue East and is served by a substandard, 15-foot-wide alley on the east with access from East Hamlin Street. Several public transit routes have stops along Eastlake Avenue East, approximately one block to the east.
4. The site slopes down from east to west with a maximum grade change of approximately 28 feet, and parts of the site are designated as Environmentally Critical Areas (ECA). An ECA exemption from steep slope development standards was granted under the Shoreline Substantial Development Permit issued for the townhouses approved under MUP 3003172. Site vegetation consists of several mature trees and typical residential landscape plants and shrubs.

#### Proposal

5. On November 5, 2007, the Director issued a decision conditionally approving MUP 3003172 to establish use for construction of seven triplex townhouse structures and parking for 21 vehicles. Exhibit 4. The parking will be provided on the unit lots it serves. In the interim, the project was revised to provide a total of 28 on-site parking spaces. In addition, there will be space on driveways for some legal tandem parking.
6. Some of the lots will be accessed from Fairview Avenue East; the others will take access from an improved alley. New sidewalks will be constructed on both Fairview Avenue East and East Hamlin Street adjacent to the subdivision and contiguous to existing sidewalks.
7. The Director evaluated the long-term drainage, transportation, bulk and scale, and public service impacts of the proposal as part of the SEPA review for MUP 3003172. Exhibit 4. The SEPA Determination of Nonsignificance issued for that MUP was not appealed.
8. Building permits have been issued for some of the approved townhouse structures, and the Applicant now seeks to subdivide the property into the anticipated 21 unit lots.
9. No dedications are required. A Street Improvement Plan was reviewed and approved by SDOT in conjunction with MUP 3011009 for street improvements to Fairview Avenue East, East Hamlin Street, and the alley for the public rights-of-way adjacent to Unit Lots M through U. The improvements include sidewalks, concrete stairs to individual units, drainage, utilities and landscaping. SDOT has accepted a 30 Percent Complete Street Improvement Plan for the remaining improvements to the alley adjacent to Unit Lots A through L, and to Fairview Avenue East, which will be developed as a "green street" in this location.

10. The alley will be improved exclusively for use by this development, and the pavement will terminate with the development. Therefore, SDOT has required that the plat be conditioned for ownership and maintenance of the alley retaining walls, including both the walls within the right-of-way and those located on private property (Unit Lots D and E).

11. Private usable open space will be provided for each unit on the same lot that it serves, and will be directly accessible to the unit. Exhibit 1.

12. The preliminary plat includes a public storm drain easement exclusive to Seattle Public Utilities. It also includes a notation that the unit lots are not separate buildable lots and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot. Exhibit 1.

#### Director's Review of Unit Lot Subdivision

13. The Director received no public comments on the subdivision during the comment period, which ended July 25, 2010.

14. The Director circulated a request for comment to agencies and City departments and received the following responses:

- a. The Fire Department, DPD Drainage and Sewer Review, DPD Structural and Ordinance Review, and the Director of Housing recommended approval of the preliminary subdivision with no conditions;
- b. Seattle City Light recommended approval of the subdivision subject to an easement for electrical facilities to provide power to the proposed unit lots and supplied the language for the easement, which has been added to the face of the plat. Exhibit 1, Sheet 2;
- c. The area is served with domestic water. Seattle Public Utilities issued a Water Availability Certificate for the project on June 1, 2010. However the Certificate is valid for "no more than 18 months from the date of certification," and therefore must be renewed. Exhibit 13 at 1.
- d. Seattle Department of Transportation required street improvements, as noted above;
- e. The Director of Public Health provided comments on the benefits of trees in urban projects and the need to avoid standing water to prevent formation of mosquito breeding areas; and
- f. The Superintendent of Parks and Recreation and King County-METRO had no comment.

15. The Director has determined that the subdivision as a whole will meet all minimum development standards for the zone.

16. The Director recommends approval of the subdivision with conditions.

17. The Examiner received five public comments on the recommendation, and three members of the public testified at the hearing. *See* Exhibit 16. The comments and public testimony focused on the issue of neighborhood parking supply and a concern that the subdivision would not provide sufficient parking for future residents. There was also some concern about whether the proposal fit with the existing neighborhood character.

#### Applicable Code Provisions

18. SMC 23.22.054, entitled "Public use and interest," lists some of the factors the Hearing Examiner must consider in determining whether to approve a subdivision:

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and that the public use and interest will be served by the platting of the subdivision, then it shall be approved. If the Hearing Examiner finds that the proposed plat does not provide the appropriate elements, or that the public use and interest will not be served, then the Hearing Examiner may disapprove the proposed plat.

19. SMC 23.22.052 provides that:

A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, pedestrian access and circulation, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the City.

C. Sidewalks shall be provided on dedicated streets, and must be convenient for pedestrians and contiguous to each other and to any private sidewalks within the subdivision and to existing sidewalks contiguous to the subdivision.

D. Vehicular access to every lot shall be from a dedicated street unless the Director ... permits access by a permanent private easement [that meets the requirements of SMC 23.22.052.D].

....

20. SMC 23.22.062 provides for unit lot subdivision of townhouse development as follows:

....  
B. [L]ots developed or proposed to be developed . . . may be subdivided into individual unit lots. The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot, except that any private, usable open space or private amenity area for each dwelling unit shall be provided on the same lot as the dwelling unit it serves.

C. Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.

D. Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard open spaces for cottage housing), and other similar features, as recorded with the Director of the King County Department of Records and Elections.

E. Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the Director of the King County Department of Records and Elections.

F. The fact that the unit lot is not a separate buildable lot and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the King County Department of Records and Elections.

### Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.76 and 23.22 SMC.

2. The neighbor's comments concerning parking supply and neighborhood character are not germane to the present application for subdivision approval. Both parking and design requirements were determined in the Director's decision approving the townhouse construction under MUP 3003172, issued in 2007.

3. The proposal will provide sidewalks along Fairview Avenue East and East Hamlin Street, requires no dedications, and takes vehicular access from a dedicated street or an improved alley that the Director has determined meets Code requirements. The subdivision meets the requirements of SMC 23.22.052.

4. The proposal also meets the requirements of SMC 23.22.062 for unit lot subdivisions. The development as a whole will meet the development standards applicable to the parent lot; the required parking, easements and private, usable open space are provided; and the required disclosures and joint use and maintenance agreements will be provided as part of the final plat.
5. As conditioned, the subdivision makes appropriate provision for the public health, safety and general welfare. The record shows that the subdivision also makes appropriate provision for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, parks and playgrounds, and sidewalks that assure safe walking conditions for students who walk to and from school.
6. The proposal will promote individual ownership of the 21 residential units which will be constructed in a configuration that is compatible with the surrounding neighborhood. As conditioned, the subdivision will serve the public use and interest.

#### **Decision**

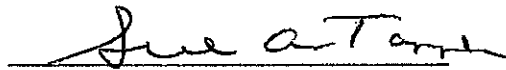
The application of Deborah Goodman on behalf of Trinity at Wards Cove Investors, LLC for the unit lot subdivision is **APPROVED**, subject to the following conditions:

#### **CONDITIONS PRIOR TO FINAL PLAT APPROVAL:**

1. Constructed alley retaining walls located within the alley right-of-way, including alley retaining walls on Unit Lots D and E, and paving within the alley right-of-way, are to be privately owned and maintained by the development. An Annual Street Use Permit with a recorded indemnity agreement will be required.
2. Prior to final plat submittal, 60 Percent Complete Street Improvement Plan Approval by SDOT will be required for SIP 178524.
3. Include with the final plat map submittal a valid Water Availability Certificate from Seattle Public Utilities for the subdivision.
4. A 12-foot wide public storm drain easement exclusive to Seattle Public Utilities is required. Legislation for securing the drainage easement will occur with final plat approval.
5. Include with the final plat map submittal draft covenants that allocate responsibility for maintenance and repair of common walls built on the unit lot lines; the portion of the utility systems serving more than one unit lot; the exterior siding, trim, windows and doors on the buildings that cross unit lot lines' and the ingress and egress easement, pedestrian easements, and alley retaining walls and paving. The covenants must be approved by DPD prior to recording.

6. Note in the covenants that under the Seattle Land Use Code "subsequent platting actions, additions or modifications to the structure(s) may not create or increase any non-conformity of the parent lot" (SMC 23.22.062C) and "the unit lot is not a separate buildable lot, and additional development of the individual unit may be limited as a result of the application of development standards to the parent lot" (SMC 23.33.062F).
7. Prior to final plat approval, record the approved covenants with the King County Department of Records and Elections and provide the recording number on the final plat plan.
8. Note on the face of the final plat map the following: "Each unit lot is not a separate buildable lot, and additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot."
9. Note on the face of the final plat map the following: "Alley retaining walls located within the alley right-of-way and on Unit Lots D and E, and paving within the alley right-of-way are to be privately owned and maintained by the development. An Annual Street Use Permit with a recorded indemnity agreement will be required."
10. Note on the face of the final plat map the declaration and dedication language provided by Seattle Public Utilities for the public storm drain utility easement.

Entered this 6<sup>th</sup> day of March, 2013.

  
Sue A. Tanner  
Hearing Examiner

#### Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

**Applicant/Owner**  
Deborah Goodman,  
on behalf of Trinity at Wards  
Cove Investors, LLC  
1412 25<sup>th</sup> Avenue East  
Seattle, WA 98112

**Director**  
Diane Sugimura, Director, DPD  
700 Fifth Avenue, Suite 1900  
Seattle, WA 98104